UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT Novak, d/b/a Pets Warehouse and PetsWarehouse.com

Plaintiff,

No. CV 02 5164 (DRH) (WDW)

-v-

OVERTURE SERVICES, INC, GOOGLE, INC., INNOVATIVE MARKETING SOLUTIONS, INC., d/b/a KANOODLE.COM, NEEPS INC d/b/a THEFERRETSTORE.COM, JOHN HOLDEFEHR d/b/a JUDGE-FOR-YOURSELF.COM, BIOCHEMICS, INC. d/b/a DOCTORDOG.COM,

Defendants.

OVERTURE SERVICES, INC.,

Counter-claimant,

-v-

ROBERT Novak, d/b/a Pets Warehouse and PetsWarehouse.com

Counter-defendant.

DEFENDANT OVERTURE SERVICES, INC.'S FIRST SET OF INTERROGATORIES TO PLAINTIFF ROBERT NOVAK D/B/A PETS WAREHOUSE AND PETSWAREHOUSE.COM

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant, Overture Services, Inc. ("Overture"), by and through its attorneys, hereby propounds the following Interrogatories to Plaintiff Robert Novak d/b/a Pets Warehouse and PetsWarehouse.com ("Novak"), to be answered separately and fully in writing and under

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oath within the time required by Rule 26 of the Federal Rules of Civil Procedure and in accordance with the Definitions and Instructions set forth herein.

INSTRUCTIONS AND DEFINITIONS

The Instructions and Definitions set forth in Overture's First Request for Production of Documents, served concurrently herewith, shall also apply to these Interrogatories.

In addition, the following Instructions and Definitions apply herein:

A. These Interrogatories shall be deemed to seek answers as of the date hereof and shall be deemed to be continuing so that any additional information relating in any way to these Interrogatories which Novak acquires or which becomes known to Novak to and including the time of trial shall be furnished to Overture promptly after such information is acquired or becomes known.

B. The following definitions apply to these interrogatories:

(1) The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

(2) The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). A draft of a nonidentical copy is a separate document within the meaning of this term.

(3) When referring to a person, to "identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of

that person need to be listed in response to subsequent discovery requesting the identification of that person.

(4) When referring to documents, "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

(5) The term "person" is defined as any natural person or business, legal or governmental entity or association.

(6) The term "concerning" means relating to, referring to, describing, evidencing or constituting.

(7) The conjunctive shall include the disjunctive, and the disjunctive shall include the conjunctive.

(8) The singular shall include the plural, and the plural shall include the singular.

(9) The term "Novak" means Plaintiff Robert Novak d/b/a Pets Warehouse and PetsWarehouse.com and any related companies within the meaning of Section 1127 of the Lanham Act.

(10) The term "Novak Marks" refers to any trademarks or service marks which Novak believes are being infringed, diluted, misappropriated or unfairly competed against as a result of Overture's activities alleged in the Complaint.

(11) The "Complaint" refers to the Complaint filed by Novak on September 24, 2002, under the caption *Robert Novak v. Overture Services, Inc. et al.*, Civil Action No. CV 02 5164.

(12) The term "Novak's Web Site" refers to all web sites operated by Novak or on behalf of Novak that use the Novak Marks, sell goods or services, or provide information about Novak, Novak's Marks or pets and pet care.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify and describe all goods and services sold or offered for sale under the Novak Marks and the dates of use of the Novak Marks with those goods and services.

INTERROGATORY NO. 2:

Identify all entities, including all web sites, which are authorized to send internet traffic to Novak's Web Site.

INTERROGATORY NO. 3:

Describe how and through which media (e.g., online, mail order or other retail outlets) goods and services are sold or offered for sale under the Novak Marks.

INTERROGATORY NO. 4:

Identify and describe in detail all facts and documents relating to Novak's Complaint that Overture's alleged activities have caused confusion, mistake and deception of the consuming public, including the identity of any person who has been confused as a result of Overture's activities and a description of the details concerning such confusion.

INTERROGATORY NO. 5:

Identify each and every third party, of whom Novak is aware, who is using or has used a name, trade name, trademark or service mark that includes the term "Pets" or "Warehouse" on the Internet, either alone or in combination with other words or symbols, and state the name, trade name, trademark or service mark used by the third party.

INTERROGATORY NO. 6:

State the amount of money Novak has spent annually on advertising and promotion of goods and services offered for sale or sold in connection with the Novak Marks since the date of first use of each of the Novak Marks.

INTERROGATORY NO. 7:

State the amount of annual gross dollar sales of goods and services offered by Novak in connection with the Novak Marks since the date of first use of each of the Novak Marks.

INTERROGATORY NO. 8:

State the amount of annual gross dollar sales of goods and services offered by Novak in connection with the Novak Marks since the date of first use of each of the Novak Marks.

INTERROGATORY NO. 9:

State the number of unique visitors and unique customers to Novak's Web Sites, on a monthly basis from the date Novak's Web Site became operational to the present.

INTERROGATORY NO. 10:

Identify all facts relating to the claim in the Complaint that the Novak Marks are famous.

INTERROGATORY NO. 11:

State the amount of monetary damages allegedly suffered by Novak as a result of Overture's activities set forth in the Complaint, and state for each amount claimed, the specific elements of any such damage and the method for calculating such damage.

INTERROGATORY NO. 12:

Identify all facts relating to Novak's allegations in the Complaint that Overture is liable for infringement.

INTERROGATORY NO. 13:

Identify all facts relating to Novak's allegations in the Complaint that Overture is liable for dilution.

INTERROGATORY NO. 14:

Identify all facts relating to Novak's allegations in the Complaint that Overture is liable for tortious interference with prospective advantage.

INTERROGATORY NO. 15:

Identify all facts relating to Novak's allegations in the Complaint that Overture is liable for unjust enrichment.

INTERROGATORY NO. 16:

Identify all persons now or formerly employed by Novak with knowledge of the information provided in Novak's answers to Interrogatories 1 through 13, and identify the interrogatories upon which Novak believes they have knowledge.

INTERROGATORY NO. 17:

Identify all persons whose expert opinions are expected to be presented by Novak at the trial of this case and in connection with each such person, provide all information required by Fed. R. Civ. P. 26(a)(2).

INTERROGATORY NO. 18:

Identify all persons whom Novak will call or may call to testify at trial.

Date: October 27, 2004 By: Scott Slavick

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Attorneys for Defendant,
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CERTIFICATE OF SERVICE

I hereby certified that on October 27, 2004, I caused **Defendant Overture Services, Inc.'s First Set of Interrogatories to Plaintiff Robert Novak d/b/a Pets Warehouse and PetsWarehouse.com** to be dispatched via Overnight Courier to the following:

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